

REMARKS

Claims 1, 2, 5-13, 16, 17, 23-25 and 34 are pending. No further claim amendments are being made at this time.

The sole remaining issue is the provision of a reissue declaration. The Examiner finds the original declaration defective in not referring to a "heterologous" gene segment in claim 30, and also says that a substitute declaration is required to address the "linked on a single vector" element of the current claims.

In reply, applicants attach a supplemental declaration. The declaration attests that every error corrected in the set of claims filed with the application including the reference to a heterologous gene segment in claim 30 arose without experimental error. The declaration further attests that every error corrected in the currently pending claims arose without any deceptive intent.

One of the two inventors, Donna E. Prunkard, has declined to sign the declaration. Thus, applicants elect to proceed under 37 CFR 1.47(a) and provide the declaration signed by the other inventor, Donald. C. Foster on behalf of himself and Dr. Prunkard.

The circumstances underlying Donna E. Prunkard's declining to sign the declaration and efforts to obtain her signature are related in the attached declaration of Jeff Landes and its exhibit.

In brief Donna Prunkard was provided a copy of the original claims of the patent being reissued, the reissue claims as filed, the currently amended claims and asked to sign the declaration now being provided. Donna Prunkard had already reviewed a copy of the specification as filed as related in here declaration of January 13, 1999 filed with the application (see Landis at paragraph (8)).

Dr. Prunkard declined to sign the declaration because she said she was not responsible for the "same vector" element of the claims (Landis at paragraph (5)). Nevertheless, a legal determination was made that she had made sufficient to contribution to be a co-inventor of these claims (Landis at paragraph (6)). The reasons for the determination were explained to

Appl. No. 09/232,488
Amdt. dated February 26, 2008
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group 1632

PATENT

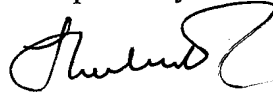
Dr. Prunkard several times as explained in Jeff Landis' declaration (Landis at paragraph (5), (7)-(10)). Nevertheless, Dr. Prunkard continued to refuse to sign the declaration, and Dr. Landis concluded that further efforts to obtain her signature would be futile (Landis at (11)).

The last known address of Dr. Prunkard is provided in Exhibit A, p. 1.

It is respectfully submitted that the declaration provides proof of Dr. Prunkard's refusal to sign, and the requirements of rule 1.47(a) are met.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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Attachments
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